



ASSOCIATION OF PEOPLE SUPPORTING EMPLOYMENT FIRST (APSE) CALL TO PHASE OUT 14(c) AND SUB-MINIMUM WAGE BY 2022*

As the only national, non-profit membership organization dedicated to Employment First – a vision that all people with disabilities have a right to competitive employment in an inclusive workforce – **APSE is calling for the complete phase out of the use of 14(c) certificates and sub-minimum wage for all individuals with disabilities by 2022.** This coincides with the implementation deadline for the Medicaid Home and Community Based Services (HCBS) settings final rule. While the sub-minimum wage may have historically been a valid and effective strategy for enhancing employment opportunities for people with disabilities, the evolution in disability rights law, modernization of the business marketplace, and advances in available community employment support, makes the 14(c) provision under the Fair Labor and Standards Act no longer necessary or acceptable.

In 2009, APSE became one of the first advocacy organizations to call for the phase out of sub-minimum wage for people with disabilities, under Section 14(c) of the Fair Labor Standards Act. Since then the issue has gained significant momentum, APSE has garnered support from other advocacy organizations, federal officials, agencies, members of Congress, and several states that have either ended sub-minimum wage altogether or they are currently considering doing so. APSE is proud to serve as a pioneer on this issue along with so many other voices in this fight.

Additionally, in the 10 years since APSE's [original statement](#), considerable progress has been made towards increasing competitive, integrated employment of people with disabilities and decreasing the number of individuals being paid sub-minimum wage. However, there is still much to be done. In calling for the phase out of sub-minimum wage and the use of 14(c) certificates, APSE recognizes the importance of undertaking such action in a way that is carefully thought out and leads to successful movement of individuals currently being paid sub-minimum wage into competitive, integrated employment opportunities in the community at prevailing wages (minimum wage or above). To this end, it is vital to plan for this transition in an effort to avoid unintended consequences that would not only damage efforts to expand community employment, but potentially result in an actual loss of rights and opportunities for individuals with disabilities to full integration and inclusion in society.

APSE's Call to Action

- ✓ End issuance of new 14(c) certificates to businesses immediately.
- ✓ Phase out of sub-minimum wage over time with technical assistance provided to transform business models and funding supports toward the outcome of competitive, integrated employment.
- ✓ Develop and implement a federal cross-agency task force dedicated to the phase out of 14(c) and sub-minimum wage in conjunction with implementation of a cross-disability national Employment First Policy.

****Adopted by the National APSE Board of Directors on March 26, 2019.***

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Underlying Principles and Concepts

The majority of individuals with disabilities who report that they don't currently have a job in the community would like to explore options for competitive, integrated employment.

Sub-minimum wage violates disability policy and the civil rights of people with disabilities: The existence and use of sub-minimum wage is a reflection of viewing people with significant disabilities as incapable of being fully integrated into the general labor force, a view that is at odds with the disability policy framework that has emerged over the past 40 years.¹ This framework is a result of a multitude of legislative and policy developments (particularly the Americans with Disabilities Act), that has made it very clear that the public policies of the United States should be based on viewing disability as a natural part of human experience that in no way diminishes a person's right to fully participate in all aspects of life. It is not acceptable to use public resources in a way that is in conflict with our national disability policy.

Productivity rate is not a fair basis for wages: Sub-minimum wage is based on the concept that production rate is the sole or primary criteria on which a business bases compensation and values a worker. This is an arcane notion that is not based on the realities of operating a business and managing employees in the 21st Century economy, where employees are valued for a wide range of knowledge, skills and abilities. The productivity standard is discriminatory towards people with disabilities, as they are among the few groups whose pay is based strictly on a productivity rate while most workers are not.

Bad job matches are the real issue: For each of us, there are jobs and tasks we are good at and those we are ill-suited for. People with disabilities are no different. New and innovative practices have made it possible to learn more about an individual's wants and needs in the workplace, and to support them to be successful in employment. Furthermore, states have identified sustainable funding streams to support these efforts. For example, in 2014, the Oregon Office of Developmental Disability Services (ODDS) began funding Discovery as a distinct service. The Discovery model is grounded in community-based experiences that are tailored to the person's skills, interests and talents.²

Use of sub-minimum wage conflicts with self-determination: Earning sub-minimum wage in a facility-based program is in conflict with the concept of self-determination and informed choice, with the individual having little control over how they spend their day, use their knowledge, skills and abilities, and how much they earn. Community employment provides opportunities to exercise self-determination and choice through economic empowerment, the ability to choose from a broad array of possible job and career options, and the opportunity to use skills and abilities in a way that the individual chooses and that best meets their specific career and other goals.

People with disabilities want to work in the community: According to the most recent National Core indicators data, the majority of individuals with disabilities who report that they don't currently have a job in the community would like to explore options for competitive, integrated employment.³

¹ Silverstein, R. (2000). *Emerging Disability Policy Framework: A Guidepost for Analyzing Public Policy*. Iowa Law Review, 85

² <https://www.dhs.state.or.us/spd/tools/dd/cm/Discovery%20FAQ.pdf>

³ <https://www.nationalcoreindicators.org/charts/2015-16/?i=14&st=>

There is clear evidence that sheltered workshops and similar programs have the ability to change their method of doing business for one that is in sync with our national disability policy of full integration and inclusion of people with disabilities.

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Sub-minimum wage is being used to support a costlier service delivery model: Research indicates that over time, supported employment is cost efficient. For every \$1 of costs taxpayers and workers invest into supported employment, more than \$1 is returned in the form of monetary benefits.⁴ Additionally, studies indicate that supported employment is significantly less expensive than sheltered workshops, and when individuals become employed in the community, those who have not spent time in sheltered work vs. those who have earned significantly more.^{5 6 7} Sub-minimum wage is not only a bad deal for individuals with disabilities – it's a bad deal for taxpayers.

Individuals do not need sub-minimum wage for employment success: The underlying rationale for the existence of sub-minimum wage has been that it creates employment opportunities for individuals with disabilities, which would not otherwise be available. Yet, it has been widely acknowledged that newer models have demonstrated this with proper training, supports and accommodations and the right job match, even individuals with the most significant disabilities can work successfully in the community at a fair rate of pay (minimum wage or higher).^{8 9}

Service providers do not need sub-minimum wage for employment success: Over the past 20 years, numerous facility-based programs utilizing 14(c) certificates have been transformed to a service model that supports individuals with a full range of disabilities in competitive, integrated employment. There is clear evidence that sheltered workshops and similar programs have the ability to change their method of doing business to one that is in sync with our national disability policy of full integration and inclusion of people with disabilities.¹⁰

The piecework economy is a declining business model: Companies that have historically offered piecework jobs are increasingly automating the kind of rote manual tasks previously set aside through 14(c) as opportunities for employment for people with disabilities. Data from the Bureau of Labor Statistics (BLS) confirms that the type of work typically performed in sheltered workshops is some of the most vulnerable to automation in the future.¹¹

⁴ Cimera, R. (2000). The Cost-Efficiency of Supported Employment Programs: A Literature Review. *Journal of Vocational Rehabilitation*. 14(1), 51-61.

⁵ Cimera, R. (2007). The Cumulative Cost-Effectiveness of Supported and Sheltered Employees with Mental Retardation. *Research & Practice for Persons with Severe Disabilities*. 32(4), 247-252.

⁶ National Council on Disability (2012). National Council on Disability Report on Subminimum Wage and Supported Employment, August 23, 2012, p. 7.

⁷ Cimera, R. (2011). Does Being in Sheltered Workshops Improve the Employment Outcomes of Supported Employees with Intellectual Disabilities? *Journal of Vocational Rehabilitation* 35 (2011) 21–27.

⁸ <http://blog.dol.gov/2015/01/05/ensuring-opportunity-extends-to-all/>

⁹ Crawford, M., Goodman, J. (2013). Below the Minimum: A Critical Review of the 14(c) Program for Employees with Disabilities. *Hofstra Labor and Employment Law Journal* 30 (2), p. 40.

¹⁰ https://ncd.gov/sites/default/files/Documents/NCD_Deal_Report_508.pdf

¹¹ <https://www.bls.gov/news.release/disabl.nr0.htm>

The Modernization of Disability Employment Policy

Since 1938, 14(c) certificates from the U.S. Department of Labor has allowed employers to pay individuals with disabilities less than the federal or state minimum wage that is mandated for all other workers.

Since the establishment of the federal minimum wage in the Fair Labor Standards Act (1938), a special minimum wage (commonly referred to as sub-minimum wage) has existed for individuals with disabilities which allows employers holding a 14(c) certificate from the U.S. Department of Labor (DOL) to pay individuals with disabilities less than the federal or state minimum wage that is mandated for all other workers. Under 14(c), wages are calculated based on an individual's production level, with the intent of paying individuals in proportion or commensurate to their productivity compared to workers without disabilities. Currently there are approximately 1,459 entities who hold 14(c) certificates, and 124,066 individuals with disabilities who are earning a sub-minimum wage.¹² Approximately 93% of these individuals are receiving services in what are known as sheltered workshops, which typically are segregated pre-employment training programs operating in factory-like settings.

Since 1938, there have been numerous changes to employment rights for people with disabilities; along with the training, support and accommodations available to ensure their success in the workforce. The **Americans with Disabilities Act** (ADA, 1990) called for full access for people with disabilities in all aspects of community life, including employment. More recently, federal laws and guidance have further aligned to support the outcome of competitive, integrated employment for people with disabilities – meaning real work for real pay. These advances call into question the future sustainability and relevance of 14(c) and subminimum wage.

Workforce Innovation and Opportunity Act (WIOA)

WIOA (2014) is a comprehensive federal law which is intended to streamline, consolidate, and improve workforce development and training services for various groups, including youth and workers with disabilities. Of particular relevance, WIOA identified competitive, integrated employment (CIE) as the preferred outcome of federally funded disability services and supports. Furthermore, CIE was defined as full- or part-time work in community settings where individuals with disabilities are paid commensurate salaries and have the same opportunities for engagement and advancement in the work place as employees without disabilities.¹³

Additionally, WIOA amends Title V of the Rehabilitation Act of 1973 by adding Section 511. Section 511 requires that workers with disabilities who are age 24 or younger complete various requirements designed to improve their access to CIE. This includes offering transition services to explore vocational rehabilitation options, as well as career counseling services which are a vital first step on the path to employment. Section 511 also requires that all workers with disabilities who are paid sub-minimum

¹² <https://www.dol.gov/whd/workerswithdisabilities/index.htm>

¹³ <http://www.wintac.org/topic-areas/resources-and-strategies-competitive-integrated-employment/law-reg-and-policy/5>

¹⁴ https://www.dol.gov/whd/specialemployment/14cLetter_July2016.pdf

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wages, regardless of their age, receive annual career counseling and information about self-advocacy, self-determination, and peer mentoring training opportunities in their local area. In essence, Section 511 aims to ensure that CIE remains the goal for all individuals with disabilities, and that facility-based employment and sub-minimum wage is the last option considered.

Medicaid Home and Community Based Services (HCBS) Settings Final Rule

The HCBS settings rule (2014) supports enhanced quality in HCBS programs and adds protections for individuals receiving Medicaid-funded services. The settings rule creates an outcome-oriented definition of service settings. Over the past 10 years, facility-based employment, including sheltered workshops, has represented approximately 25% of Medicaid funded employment services.¹⁵ However, the settings rule – building on the precedent previously established in the 1999 *Olmstead v. L.C.* decision– challenged this prioritization of how Medicaid dollars are used. The *Olmstead* decision clarified the law’s intention for Medicaid services to provide alternatives to institutionalization.¹⁶ The HCBS settings rule clarifies that program participants must have access to the benefits of community living and have the right to receive services – including employment services - in the most integrated setting.¹⁷

About APSE:

Established in 1988, APSE is the only national organization to focus exclusively on inclusive employment and career advancement opportunities for individuals with disabilities. A growing national non-profit membership organization, our 3000+ members include individuals with disabilities, families, disability professionals, and businesses. APSE currently has chapters in 40 states and the District of Columbia, with members from all 50 states and Puerto Rico, and several foreign countries

APSE believes in real jobs for real pay for all people with disabilities, or Employment First.

¹⁵ Winsor, J., Timmons, J., Butterworth, J., Migliore, A., Domin, D., Zalewska, A., & Shepard, J. (2018). *StateData: The national report on employment services and outcomes*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

¹⁶ *Olmstead v. L.C.*, [527 U.S.](#) 581 (1999)

¹⁷ <https://www.medicaid.gov/medicaid/hcbs/downloads/final-rule-fact-sheet.pdf>

APSE's Recommendations for Successfully Phasing Out 14(c) and Sub-Minimum Wage

APSE proposes the following recommendations to bring disability employment services into alignment with modern policy that clearly prioritizes competitive, integrated employment as the preferred outcome for people with disabilities.

- Issuance of new sub-minimum wage 14(c) certificates to employers by the U.S. Department of Labor should end immediately.
- The phase out of sub-minimum wage should occur over time, accompanied by a comprehensive, national systems change movement based on the principle that employment in the community is the first, or preferred service option for service recipients – i.e., Employment First.
 - Technical assistance and support should be provided to systems that currently rely on service provider delivery of services using 14(c) certificates, and to the holders of 14(c) certificates themselves, in order to realign delivery and business models that can effectively move the individuals currently receiving sub-minimum into employment opportunities in the community at minimum wage or higher.
- A national effort must be undertaken to improve the overall quality of community employment outcomes both in terms of individual outcomes (wages, hours, diversity of employment), and system outcomes (efficiency and effectiveness). Such efforts should be undertaken in conjunction with current systems change efforts and in collaboration with OSERS, CMS, RSA and DOL, and should address the following priorities:
 - A federal cross-agency task force should be created to develop and implement the phase out of sub-minimum wage in conjunction with implementation of a cross-disability national Employment First policy. Agencies represented on this task force should include, but not be limited to, Rehabilitation Services Administration (RSA), Centers for Medicare and Medicaid Services (CMS), Substance Abuse and Mental Health Services Administration, Office of Special Education Programs (OSERS), Social Security Administration, and Department of Labor (DOL) Office of Disability Employment Policy and Wage and Hour Division.
- The movement of individuals into non-work day habilitation services, instead of into community employment, is not an acceptable outcome of the phase out of 14(c) and sub-minimum wage. Similarly, it is not acceptable to reclassify individuals currently receiving sub-minimum wage as “trainees” or similar designation, to comply with the requirement to discontinue use of sub-minimum wage.
 - It is similarly unacceptable to eliminate an individual’s day services and wrap-around supports as a result of the phase out of 14(c) and sub-minimum wage.